

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	
	)	Case No.: <b>13-O-10035-DFM</b>
<b>JON RAYMOND BARKER,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 161849,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
A Member of the State Bar.	)	

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Respondent Jon Raymond Barker (Respondent) was charged with four counts of violations of the Rules of Professional Conduct and the Business and Professions Code.<sup>1</sup> He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>2</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges

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<sup>1</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

<sup>2</sup> Unless otherwise indicated, all references to rules are to this source.

(NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>3</sup>

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in California on December 14, 1992, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On May 31, 2013, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC sent to his official address was not returned by the U.S. Postal Service.

The State Bar also attempted to contact Respondent at his official membership records telephone number. The State Bar left a voicemail message.

To date, Respondent has not contacted the State Bar since February 1, 2013, when the State Bar discussed this matter with Respondent. Nor has Respondent filed a response to the NDC. On July 9, 2013, the State Bar filed and properly served a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified

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<sup>3</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on July 26, 2013. The order entering the default was served on Respondent at his membership records address by certified mail, return receipt requested. The order also placed Respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time. Respondent did not subsequently seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].)

On February 13, 2014, the State Bar properly filed and served the petition for disbarment on Respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) Respondent has no other disciplinary matters pending; (3) Respondent has no record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of Respondent's misconduct. Respondent did not thereafter respond to the petition for disbarment or move to set aside or vacate the default.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of Respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

**Case Number 13-O-10035 (Barton and Janet Matter)**

Count One – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by failing to maintain at least \$90,000 received for the benefit of his clients in a client trust account.

Count Two – Respondent willfully violated section 6106 (moral turpitude) by misappropriating \$90,000 of client funds.

Count Three – Respondent willfully violated section 6106 (moral turpitude) by misrepresenting to his clients in July 2009 that \$90,000 was on deposit in his client trust account when the balance was only \$41,598.91.

Count Four – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failure to pay funds to client) by failing to refund \$85,000, as agreed to by Respondent in a settlement agreement with the clients and which the clients are entitled to receive.

**Disbarment Is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and Respondent's disbarment is recommended. In particular:

- (1) The NDC was properly served on Respondent under rule 5.25.
- (2) Reasonable diligence was used to notify Respondent of the proceedings prior to the entry of his default, as the NDC was served on Respondent at his membership records address and the State Bar attempted to reach Respondent by telephone and by email.
- (3) The default was properly entered under rule 5.80.
- (4) The factual allegations in the NDC, deemed admitted by the entry of the default, support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends his disbarment.

## **RECOMMENDATION**

### **Disbarment**

The court recommends that Respondent **Jon Raymond Barker**, State Bar number 161849, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

### **Restitution**

The court also recommends that Respondent be ordered to make restitution to John Joseph Barton and Jamil Janet in the amount of \$85,000 plus 10 percent interest per year from November 15, 2012.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

### **California Rules of Court, Rule 9.20**

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Jon Raymond Barker**, State Bar number 161849, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: June \_\_\_\_\_, 2014

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DONALD F. MILES  
Judge of the State Bar Court